

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Leanne Fornelli	Team: Squad #8	CCRB Case #: 201502336	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 03/30/2015 1:50 PM	Location of Incident: West Side Highway in front of 2 Bloomfield Street	Precinct: 06	18 Mo. SOL 9/30/2016	EO SOL 9/30/2016	
Date/Time CV Reported Tue, 03/31/2015 2:18 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 03/31/2015 2:18 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Patrick Cherry	01492	926676	JT T/F

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Patrick Cherry	Abuse: Det. Patrick Cherry stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.DT3 Patrick Cherry	Discourtesy: Det. Patrick Cherry spoke discourteously to § 87(2)(b)	
C.DT3 Patrick Cherry	Discourtesy: Det. Patrick Cherry acted discourteously toward § 87(2)(b)	
D.DT3 Patrick Cherry	Abuse: Det. Patrick Cherry threatened to arrest § 87(2)(b)	
E.DT3 Patrick Cherry	Abuse: Det. Patrick Cherry threatened to issue summonses to § 87(2)(b)	
F.DT3 Patrick Cherry	Off. Language: Det. Patrick Cherry made remarks to § 87(2)(b) based upon his country of origin.	

Case Summary

On March 30, 2015, at approximately 1:50 p.m. (time estimated via Uber Technologies, Inc. documentation (encl. K1-K2) and civilian statements), in front of the New York City (NYC) Department of Sanitation building (encl. D4) on the West Side Highway in Manhattan, Det. Patrick Cherry of the Joint Terrorist Task Force stopped the Uber cab occupied by § 87(2)(b) and § 87(2)(b) (**Allegation A**). Det. Cherry threatened to arrest the driver, § 87(2)(b) acted and spoke discourteously to him, threatened him with summonses and made remarks to him based upon his country of origin (**Allegations B through F**).

A video of this incident, recorded by § 87(2)(b) was uploaded to YouTube and it received extensive media coverage.

Other Evidence

A completed and unedited version of the video is attached to Investigative Action 9 (encl. L1-L6).

Mediation, Notice of Claim and Criminal Histories

- On April 8, 2015, § 87(2)(b) was offered mediation over the phone and opted for an investigation.
- This report was submitted pending a FOIL request sent on April 15, 2015 (encl.), for any notice of claim filed in regard to the incident.
- § 87(2)(b), § 87(2)(c)

Civilian and Officer CCRB Histories

- This is the first complaint filed by § 87(2)(b) and the first involving § 87(2)(b) and § 87(2)(b) (encl. C1-C3).
 - Det. Cherry has been a member of the service for fourteen years and has had thirty other CCRB allegations pled against him in twelve cases (encl. B1-B3) which include the following: In CCRB 200305443, the Board substantiated and recommended charges for allegations of physical force and a frisk and/or search of person, and the NYPD disposition for both allegations was not guilty. In CCRB 200400928, the Board substantiated and recommended charges for allegations of a question and/or stop and a frisk and/or search of person, and the NYPD disposition for both allegations was not guilty. § 87(2)(g)
 - A threat of arrest was pled against him that was closed as unfounded.
 - Six allegations of discourtesy (word) were pled against him, three of which were unsubstantiated and three of which were closed as unfounded.
- Two allegations of offensive language were pled against him and were closed as unsubstantiated.

Investigative Findings and Recommendations

Allegation A: Abuse of Authority: Det. Patrick Cherry stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.

It is undisputed that Det. Cherry stopped the Uber cab occupied by § 87(2)(b) and § 87(2)(b) but the circumstances are in question. § 87(2)(b) (encl. I1-I6), the driver of the cab, testified that when he arrived to West 15th Street at the West Side Highway

(encl. D1-D3), he was in the leftmost of two westbound traffic lanes and two cars were in front of him stopped at the traffic light. The vehicle directly in front of him, later determined to be an unmarked police car, had on its left blinker, which indicated to § 87(2)(b) that the driver, later identified as Det. Cherry, planned to turn left onto the West Side Highway. After less than one minute, the traffic light turned green and the first vehicle continued while the police car travelled in reverse a short distance. § 87(2)(b) briefly honked his horn one time and at no other time to alert Det. Cherry, as he thought the police car would hit the cab. He did not gesture with his hands and did not see Det. Cherry do so. He then pulled up to the right of the police car for about two seconds, during which time he raised his left hand, and opened and closed his fingers to indicate a blinker while he said, "Put your blinker on." He intended to communicate to Det. Cherry that he should have his hazard lights on if he wanted to park and did not plan on turning left. He then proceeded to catch the green light and made the left turn onto the West Side Highway. He immediately observed in his rearview mirror the emergency lights on the dashboard of the police vehicle. He pulled over as soon as it was safe for him to do so, in the right turn lane leading into the parking lot of the NYC Department of Sanitation building (encl. D4). He stopped near the rear of the turn lane, as to give other vehicles enough room in front of him to use it if needed. § 87(2)(b) was unaware of any traffic violations he committed and although Det. Cherry would later mention three, he never specified what they were and § 87(2)(b) had no indication of what they were. Det. Cherry was angry upon approaching the cab.

§ 87(2)(b) (encl. H1-H7), who sat behind the driver's seat in the cab, corroborated § 87(2)(b)'s testimony with the following distinctions: When the cab reached West 15th Street at the West Side Highway (D1-D3), it came to an abrupt stop, at which time the traffic light turned green. § 87(2)(b) observed a vehicle later determined to be an unmarked police car in front of the cab with only brake lights, and no reverse or signal lights. No vehicle was in front of the police car, and he could not recall if any vehicles were between the police car and the cab, although he saw no car go around the police car. While behind the police car, § 87(2)(b) (§ 87(2)(b) did not know his name at the time) did not gesture, but § 87(2)(b) did not see if Det. Cherry gestured as he did not look. After fifteen to thirty seconds, the cab pulled around to the side of the police car. § 87(2)(b) thought the cab rolled slowly by the police car without stopping and if the cab did stop, it was for no more than a couple seconds. § 87(2)(b) quickly honked his horn two times consecutively and made the abovementioned gesture to indicate a blinker. § 87(2)(b) never observed § 87(2)(b) commit traffic infractions, but he was uncertain if honking was illegal. Det. Cherry was very angry upon his approach. He specified the three violations § 87(2)(b) committed before § 87(2)(b) began recording the incident (which § 87(2)(b) determined from watching the video), but § 87(2)(b) could only recall one of them being honking.

§ 87(2)(b) (encl. G1-G9; E1-E5), who sat behind the front passenger's seat in the cab, corroborated § 87(2)(b)'s testimony with the following distinctions: When the cab pulled around to the right of the police car and braked for two and a half seconds, § 87(2)(b) assumed § 87(2)(b) (§ 87(2)(b) did not know his name at the time) signaled or mouthed something to Det. Cherry, but he did not see this because § 87(2)(b)'s head was turned away from him. § 87(2)(b) heard § 87(2)(b) say something about a blinker. § 87(2)(b) never heard a horn, but assumed that § 87(2)(b) honked at Det. Cherry because § 87(2)(b) would later say, "You chose to honk at the wrong guy," a comment captured on the video footage of the incident (encl. L1-L6). § 87(2)(b) said the only thing he saw occur that might have constituted as a traffic violation was when § 87(2)(b) pulled around the police car.

Det. Cherry (encl. J1-J11) testified to the following: On West 15th Street at the West Side Highway (D1-D3), he observed an open parking space in the parking lane next to the leftmost traffic lane and planned to park. He pulled up as far as he could, but needed more room to reverse

and parallel park into the spot as there was a car in front of him. He put on his left turn signal and put his car in reverse to activate the car's reverse lights to indicate that he was parking. When the traffic light turned green and there was enough room, he put the car in drive and pulled forward. He then again put the car in reverse, removed his foot from the brake thus allowing the car to roll, and looked in his rearview mirror. A car which he later determined to be an Uber cab driven by § 87(2)(b) came up behind the police car quickly, which startled Det. Cherry. § 87(2)(b) honked his horn, for how long Det. Cherry could not recall, but it was somewhere between a brief and 20-second beep. He could not recall how many times § 87(2)(b) honked his horn. § 87(2)(b) began mouthing something (Det. Cherry could not tell what) and moved both hands straight up and down. After no more than ten seconds, § 87(2)(b) pulled to the right of the police car, and again moved his mouth and made the same hand gestures. After five seconds, the cab drove away. Det. Cherry stopped § 87(2)(b) for honking his horn without emergency and parking on the pavement when he paused next to the police car for five seconds. Nothing else factored into the decision to stop § 87(2)(b)'s vehicle, and he intended to warn and admonish § 87(2)(b) for these violations. In the video taken by § 87(2)(b) (encl. L1-L6), Det. Cherry mentions three violations. He said the third violation was § 87(2)(b)'s initial refusal to provide his driver's license and registration after the stop was effected. Det. Cherry did not get angry until § 87(2)(b) said, in response to the first request for his license and registration, "I'm not giving you anything."

Article 9 § 375.1(a) of Vehicle and Traffic Laws states that a horn shall produce a sufficiently loud sound to serve as a danger warning but shall not be used other than as a reasonable warning, nor should it be unnecessarily loud or harsh (encl. A1). The vehicle and traffic law that best addresses "parking on the pavement," as stated by Det. Cherry, was Article 9 § 1202.(a)1-a which prohibits drivers from stopping, standing or parking a vehicle on the roadway side of any vehicle that is stopped, standing or parked at the edge of a street (encl. A2-A3). A seizure constitutes as misconduct if an officer acts with knowledge that he was acting improperly, acted without concern for the propriety of his actions or acted without due and reasonable care that his actions be proper, Police v. Dowd and Rose, (OATH Index Nos. 1189/90, 1190/90) (encl. A4-A6).

§ 87(2)(g)

Allegation B: Discourtesy (Word): Det. Patrick Cherry spoke discourteously to § 87(2)(b)

§ 87(2)(b)

It is undisputed that Det. Cherry spoke discourteously to § 87(2)(b) as he acknowledged doing this, and his remarks were captured on the video of the incident that § 87(2)(b) recorded with his cellphone (encl. L1-L6). Det. Cherry (encl. J1-J11) testified that before § 87(2)(b) began recording (which he determined from the video), he said to § 87(2)(b) "Are you fucking kidding me?" after § 87(2)(b) initially refused to provide his license and registration. He also acknowledged stating the following discourtesies that are heard in the video: "Stop it with that bullshit" (00:10 minute mark), "What fucking planet do you think you're on right now?" (00:19), "Sit in your fucking car and stay there" (00:25), "Pull over five fucking feet" (00:38), "You're going to let me fucking finish" (02:00) and "driving up my ass" (02:16). Det. Cherry said he made these statements for no other reason other than he was angry and acting inappropriately.

An officer is required to be courteous in his interactions with the public, Patrol Guide Procedure 203-09 (encl. A24).

§ 87(2)(g)

Allegation C: Det. Patrick Cherry acted discourteously toward § 87(2)(b)

It is undisputed that Det. Cherry acted discourteously toward § 87(2)(b). Det. Cherry (encl. J1-J11) testified that § 87(2)(b)'s documentation was inside an object § 87(2)(b) said the documents were within a plastic bag and Det. Cherry said it was a folder) and when Det. Cherry had the object in his hand, he threw it onto the front passenger's seat. This was corroborated by § 87(2)(b) (encl. I1-I6), § 87(2)(b) (encl. H1-H7) and § 87(2)(b) (encl. G1-G9; E1-E5), although there were discrepancies about what the object was that was holding the documentation. Det. Cherry (encl. J1-J11) said he threw the object into the cab as opposed to handing it to § 87(2)(b) because he was angry.

An officer is required to be courteous in his interactions with the public, Patrol Guide Procedure 203-09 (encl. A24).

§ 87(2)(g)

Allegation D: Abuse of Authority: Det. Patrick Cherry threatened to arrest § 87(2)(b)

Allegation E: Det. Patrick Cherry threatened to issue summonses to § 87(2)(b)

It is undisputed that Det. Cherry threatened to arrest § 87(2)(b) and issue him summonses, but some of the circumstances are disputed. The video that § 87(2)(b) took with his cellphone (encl. L1-L6) contains the following: At the 03:00 minute mark, after Det. Cherry returns to the cab and has in possession § 87(2)(b)'s license and registration, says, "The only reason you're not in handcuffs going to jail and getting summonses in the precinct is because I have things to do. That's the only reason that's not happening. 'Cause this isn't important enough for me. You're not important enough. Don't ever do that again."

Det. Cherry (encl. J1-J11) said he made this comment because § 87(2)(b) could have been arrested for the two abovementioned vehicle and traffic law violations that he observed before the stop and for initially refusing to provide his license and registration, violations for which he could also have been issued summonses.

A threat of arrest based on personal pique and without any reasonable basis is abuse of authority, Police v. Seligson (OATH Index No. 1621/00) (encl. A7-A23).

§ 87(2)(g)

§ 87(2)(g)

Allegation F: Det. Patrick Cherry made remarks to § 87(2)(b) based upon his nation of origin.

In the video of the incident that § 87(2)(b) recorded with his cellphone (encl. L1-L6), at the 00:08 minute mark, Det. Cherry says, “Stop it with your ‘For what, sir? For what, sir?’ Stop it with that bullshit...” At 00:18, he says, “I don’t know what fucking planet you think you’re on right now.” § 87(2)(b) answers, “I’m not planning, sir. I’m here.” Det. Cherry then says, “Planning? I said planet. I said planet.” At 02:22, Det. Cherry says, “I don’t care what you have to say. Do you understand that?” At 02:40, he says, “I don’t know where you’re coming from or where you think you are appropriate in doing that,” and at 02:47, “How long have you been in this country?” At 02:59, he tells § 87(2)(b) the only reason he is not being arrested and taken to the precinct stationhouse to receive summonses is because “This isn’t important for me. You’re not important enough.”

§ 87(2)(b) (encl. I1-I5) initially said that he did not know why Det. Cherry asked him how long he had been in the country. When he provided additional information (encl. I6), he said that after consideration, he thought that Det. Cherry asked him this because he does not speak English very well and this was also the reason he twice corrected him when he mistook “planet” for “planning.”

Det. Cherry (encl. J1-J11) denied referring to § 87(2)(b)’s nation of origin. He asked § 87(2)(b) how long he had been in the country to determine his level of driving experience in the United States and intended nothing further.

Patrol Guide Procedure 203-10 states that an officer may not make disrespectful remarks regarding another person’s ethnicity (encl. A 25-27).

§ 87(2)(g)

Pod: 8

Investigator:	_____	_____	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date